

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD COLE BURCHETT,)	
)	
Petitioner,)	NO. C05-1430RSL
)	
v.)	
)	ORDER DISMISSING § 2254
DOUG WADDINGTON,)	PETITION
)	
Respondent.)	
_____)	

The Court, having reviewed petitioner's writ of habeas corpus petition, respondent's motion to dismiss the petition, the Report and Recommendation of the Honorable Monica J. Benton, United States Magistrate Judge, and the remainder of the record, finds and ORDERS as follows:

- (1) On June 7, 2006, the Honorable Monica J. Benton, United States Magistrate Judge, issued her Report and Recommendation in the above-captioned matter (Dkt. #29). The Report and Recommendation was mailed to petitioner but returned unopened on June 15, 2006 because petitioner apparently no longer resided at the address on file with the Court. As a result, on June 21, 2006, the Court issued an Order to Show Cause directing

petitioner to provide his current address or risk dismissal of this action (Dkt. #31).

- (2) Respondent responded to the Order to Show Cause on July 14, 2006 (Dkt. #34), August 9, 2006 (Dkt. #35 and #36), and August 16, 2006 (Dkt. #37), providing three addresses where petitioner may be located.
- (3) On August 29, 2006, the Court issued a Minute Order (Dkt. #38) directing the Clerk of Court to send petitioner another copy of the Report and Recommendation (Dkt. #29) to the three addresses provided by respondent:

327½ W. 2nd Ave.
Spokane, WA 99201

Washington State Doc #984365
c/o Spokane County Jail
1100 W. Mallon
Spokane, WA 99260-0320

Washington State Doc #984365
Benton County Corrections
7122 W. Okanogan, Building B
Kennewick, WA 99336

Petitioner was directed to file and serve his objections to the Report and Recommendation, if any, within fifteen days of the date of the Minute Order, and if no timely objections were filed, the matter would be ready for consideration by the undersigned on Friday, September 22, 2006.

Petitioner was notified that failure to file objections within the specified time waived his right to appeal any order by the district court adopting the Report and Recommendation. If the attempt at service of the Report and Recommendation failed, petitioner was notified that the Court would dismiss the above-captioned matter without prejudice for failure to prosecute under Local Rule 41(b)(2).

- (4) Two of the copies of the Report and Recommendation sent to petitioner were returned as undeliverable. See Dkt. #39 and #40.
- (5) The copy of the Report and Recommendation sent to petitioner's address at: 327½ 2nd Ave., Spokane, WA 99201, however, was not returned.
- (6) Petitioner has not filed objections to the Report and Recommendation, therefore this matter is properly before the Court for consideration.
- (7) The Court adopts the Report and Recommendation.
- (8) Respondent's motion to dismiss petitioner's federal habeas petition (Dkt. #28) is GRANTED.
- (9) Petitioner's writ of habeas corpus petition, and this action, are DISMISSED, with prejudice, under 28 U.S.C. § 2244(d).
- (10) The Clerk of Court shall send a copy of this Order to petitioner at the address listed in number (5) above, to all counsel of record, and to the Honorable Monica J. Benton.

DATED this 3rd day of October, 2006.



Robert S. Lasnik
United States District Judge